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OFFICE OF PETITIONS

In re Application of :
Starr, et al. : DECISION ON PETITION
Application No. 10/605,222 :
Filed: September 16, 2003 :
Atty. Dkt. No.: 3023824 US01 :

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed June 18, 2007.

The petition is hereby DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned April 27, 2007 for failure to timely submit a proper reply to the Notice of Allowance and Issue Fee Due (Notice) mailed January 26, 2007. The Notice set a three month statutory period of time for reply. Notice of Abandonment was mailed May 24, 2007.

Petitioners argue that the Supplemental Notice of Allowability, mailed March 22, 2007, set a three month period of time for submission of the issue fee. Petitioners further argue that the Supplemental Notice of Allowability superceded the Notice mailed January 26, 2007. Petitioners also assert that the issue fee has been timely submitted within three months of the mail date of the Supplemental Notice of Allowability.

Petitioners' arguments have been carefully considered, but are not found convincing. The Supplemental Notice of Allowability did not "supercede" the Notice of Allowance and Issue Fee Due mailed January 26, 2007. There is no indication in the record that the Office withdrew the Notice of Allowance and Issue Fee Due. There is also no indication in the record that the Office

issued a Supplemental Notice of Allowance and Issue Fee Due setting forth a new period of time for submission of the issue fee.

The Supplemental Notice of Allowability indicated as follows: "If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course."

The Notice of Allowance had been "previously mailed" on January 26, 2007. The Notice of Allowance and Issue Fee Due set a three month statutory period of time for reply, making the issue fee due on or before April 26, 2007.

The Supplemental Notice of Allowability further stated "Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. THIS THREE-MONTH PERIOD IS NOT EXTENDABLE."

The requirements noted in the Supplemental Notice of Allowability concerned the submission of corrected drawings. While the Supplemental Notice of Allowability did set a new period of time for submission of the corrected drawings, it did not set a new period of time for submission of the issue fee.

The application became abandoned as a matter of law for failure to timely submit the issue fee within the time period set by the Notice of Allowance and Issue Fee Due. See, 35 USC 133. Failure to submit the issue fee within the required time period is not grounds for withdrawal of the holding of abandonment.

ALTERNATE VENUE

Petitioners may wish to consider filing a petition stating that the entire delay was unintentional. Petitioners' attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a

statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioners intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
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By hand: U.S. Patent and Trademark Office
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Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.


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